

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAM MUGRABY,

Case No.: 1:19-cv-00153-VM

Plaintiff,

JURY TRIAL DEMANDED

-against-

REFLECTIONS YOGA, LLC,

Defendant.

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DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, REFLECTIONS YOGA, LLC, hereby answer the Complaint of the plaintiff, SAM MUGRABY filed in the above-captioned matter on January 7, 2019 and assert affirmative defenses as follows:

**ANSWERING EACH AND EVERY CAUSE
OF ACTION OF THE COMPLAINT**

FIRST: Denies, upon information and belief, each and every allegation contained in paragraphs numbered "1", "4", "6", "16", "17", "20", "21", "22", "23", "24", "25", "28", "29", "30", "31", "32", "33", "34", "35", "37", "38", "39", "40", "41", "42", "43", "44", "46", "47", "48", "49", "50", "51", "52", "53", "56", "57", "58", "59", "60", "61", "62", and "63" of the Complaint.

SECOND: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "2", "3", "5", "7", "13", "14" and "18" of the Complaint and refers all questions of law to the Court.

THIRD: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "8", "9", "10", "11", "12", "15", "27"

and "55" of the Complaint.

FOURTH: Repeats, reiterates and realleges each and every admission and denial heretofore made to the allegations contained in the paragraphs mentioned in paragraph numbered "26", "36", "45" and "54" of the Complaint with the same force and effect as if here repeated and again set forth at length.

*** NO SCREEN SHOT IS ATTACHED TO THE COMPLAINT AS STATED IN
PARAGRAPH NO. 19.**

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FIFTH: Plaintiffs fail to state a claim against defendant on which relief can be granted.

FOR A SECOND, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SIXTH: One or more third parties are liable for the conduct alleged and will be required to answer and indemnify.

FOR A THIRD, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTH: Plaintiffs' claims for relief are barred by the "Fair Use Doctrine" pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107.

FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTH: The action is barred by the doctrine of Laches.

FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINTH: Plaintiffs action is barred by the doctrine of equitable estoppel.

FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TENTH: Defendant's conduct was innocent, non-infringing, and not a willful
infringement of copyright.

FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

ELEVENTH: Any alleged infringement is barred by the statutes of limitations as set
forth in section 507 of the Copyright Act, 17 U.S.C. §507, and as set forth in New York Civil
Practice Law and Rules.

FOR A EIGHTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWELFTH: Plaintiff has failed to register the copyrights in one or more of the products
set forth in their Complaint and thus are not permitted to file this suit or maintain this action.

FOR A NINTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

THIRTEENTH: Plaintiffs have engaged in one or more acts that have misused their
copyrights including but not limited to having wrongfully attempted to extend the scope of the
limited monopoly granted by the Copyright Act. Defendants reserve the right to assert one or
more antitrust related claims.

FOR A TENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FOURTEENTH: Plaintiffs have waived their rights to claim copyright infringement.

FOR A ELEVENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

FIFTEENTH: Plaintiffs have abandoned or forfeited their copyrights.

FOR A TWELFTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SIXTEENTH: Plaintiff's have acquiesced in any alleged copyright infringement.

FOR A THIRTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

SEVENTEENTH: This action may be barred by the "first sale doctrine" because if
lawfully obtained and possessed one or more of Plaintiff's copyrighted works. 17 U.S.C. §109(a).

FOR A FOURTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

EIGHTEENTH: Plaintiff's claims are barred since critical part or portions of their
alleged protected copyrights are invalid due to de minimis creative content.

FOR A FIFTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

NINETEENTH: Plaintiff's claims are barred since critical part or portions of their
alleged protected copyrights are invalid due to the fact any use of the image allegedly owned by
Plaintiff was for a charitable event for US Veterans.

FOR A SIXTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTIETH: This Court does not have personal jurisdiction over defendants to enter a judgment against defendant.

FOR A SEVENTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIRST: Plaintiff is barred by 17 U.S.C. section 412 from claiming statutory damages or attorney's fees under the Copyright Act in that any alleged acts of infringement occurred before first registration of the Plaintiff's alleged work.

FOR A EIGHTEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SECOND: Plaintiff have failed to join indispensable parties.

FOR A NINETEENTH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-THIRD: Plaintiff are not the owner of one or more Copyrights at issue.

FOR A TWENTIETH, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FOURTH: One or more of plaintiff's copyrights have elements taken from the public domain upon which a copyright infringement action cannot be maintained.

FOR A TWENTY-FIRST, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-FIFTH: Plaintiff's claims, including their assertion of copyright protection

are barred by the doctrine of Merger.

FOR A TWENTY-SECOND, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SIXTH: This action is barred by the “scenes-a-faire” doctrine.

FOR A TWENTY-THIRD, SEPARATE AND COMPLETE DEFENSE
THE DEFENDANT RESPECTFULLY SHOW THIS COURT,
UPON INFORMATION AND BELIEF:

TWENTY-SEVENTH: This action is barred by section 117 limitations on exclusive rights.


WHEREFORE, the defendant, REFLECTIONS YOGA, LLC, demands judgment against the plaintiff dismissing the Complaint herein, together with costs and disbursements of this action.

Dated: Mineola, New York
March 25, 2019

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY:



EDWARD J. KELLY
Attorneys for Defendant
330 Old Country Road - Suite 305
Mineola, New York 11501
(516) 739-0400
Our File No.: HMW/EJK 150770-400
E-Mail: ekelly@krklaw.com

TO: RATH, YOUNG and PIGNATELLI, P.C.
Attorneys for Plaintiff
120 Water Street - 2nd Floor
Boston, Massachusetts 02109
(603) 226-2600


STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

EDWARD J. KELLY, being duly sworn deposes and says;

I am a duly admitted and practicing Attorney-at-Law; that I am one of the attorneys for the defendant, REFLECTIONS YOGA, LLC, herein and that I have read the foregoing ANSWER and know the contents thereof and that the same is true to my own knowledge, except as to those statements therein alleged to be upon information and belief and as to those statements, I believe it to be true.

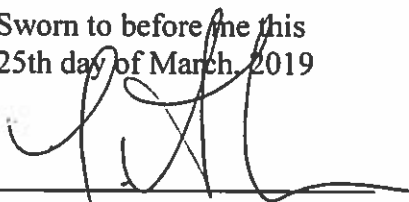
The source of my knowledge is the contents of a file maintained in my office, which contains various reports of investigations, statements, interviews, copies of official documents, etc.

The reason this verification is not made by the defendant, REFLECTIONS YOGA, LLC, is due to the fact that said defendant does not reside in the same county wherein I maintain my professional office; to wit: County of Nassau.

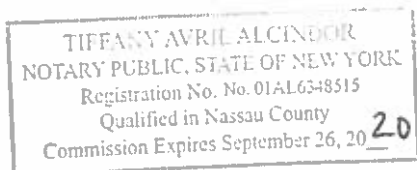


EDWARD J. KELLY

Sworn to before me this
25th day of March, 2019



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019 I served a true copy of the foregoing ANSWER by mailing same in a sealed envelope, by first class mail with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

To: RATH, YOUNG and PIGNATELLI, P.C.
Attorneys for Plaintiff
120 Water Street - 2nd Floor
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EDWARD J. KELLY
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